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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,551	10/24/2000	Roe Peterson	1009-04-01	2563
1473	7590	10/31/2007		
ROPES & GRAY LLP PATENT DOCKETING 39/361 1211 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8704			EXAMINER KAZIMI, HANI M	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/695,551

**Applicant(s)**

PETERSON, ROE

**Examiner**

Hani Kazimi

**Art Unit**

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,5-8,10,14,16-22,25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,5-8,10,14,16-22,25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/6/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

1. This communication is in response to Applicant's amendment filed on March 16, 2007. Claims 2, 5, 7, 8, 10-11, 14, 16-19, 21-22 and 25-26 are pending in the application:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 2, 5, 7, 8, 10-11, 14, 16-19, 21-22 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al* in view of US 6,813,612 *Rabenold et al* and further in view of *Public Notice, Federal Communications Commission, First Paging Service Spectrum Auction Scheduled for December 7, 1999 Comment Sought on Reserve Prices or Minimum Opening Bids*.

Claims 2, 5, 7, 8, 10-11, 14, 16-19, 21-22 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al* in view of US 6,813,612 *Rabenold et al* and further in view of *Public Notice, Federal Communications Commission, First Paging Service Spectrum Auction Scheduled for December 7, 1999 Comment Sought on Reserve Prices or Minimum Opening Bids* as discussed in the previous office action mailed on October 5, 2006.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 2, 5, 7, 8, 10-11, 14, 16-19, 21-22 and 25-26 have been fully considered but are not persuasive.

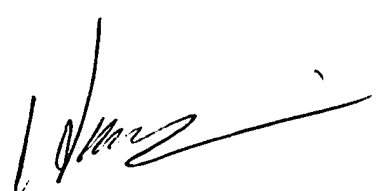
The Examiner's response still applies to the amendment filed on March 16, 2007. FCC does disclose revision of bids (...calculate minimum bid increments, as cited by Applicant at page 9) based on the passage of time between placement of bids (computation is based on an activity indices of different rounds, as cited by Applicant at page 9; "activity" is clearly defined by the number of bids *per unit time*"). The fact that FCC uses different phrasing for these concepts does not alter the fact that it discloses the same concepts recited in the Claims and argued by Applicant. Applicant's phrasing of "revising... based upon the passage of time" is so broad as to be met by the disclosure of FCC. Applicant argues that the concepts of the Claims and art are different but does not comprehend the similarities set forth by the Examiner directly above. Applicant's argument regarding the other Claims are based on this same premise and are likewise rejected. *Auction Procedural Issues*, hereinafter, FCC.

**Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (571) 272-6745. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-2 17-9197 (toll-free).



HANI M. KAZIMI  
PRIMARY EXAMINER  
Art Unit 3691

May 28, 2007